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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TODD M. HONEYCUTT,

Petitioner,

vs.

BILL DONAT, *et al.*,

Respondents.

2:06-cv-00634-RLH-GWF

ORDER

14 This habeas matter comes before the Court on petitioner's motion for release (#90). On April
15 14, 2014, following upon the decision of the Court of Appeals, the Court directed entry of judgment
16 conditionally granting the writ of habeas corpus. Under the conditional writ grant, the convictions in
17 both the joined sexual assault case and the solicitation case (as described previously herein) were
18 vacated subject to the ability of the State to elect to retry petitioner within 30 days of entry of judgment
19 and to commence a retrial within 120 days of the election.

20 Respondents filed a timely Rule 59 motion contending that only the conviction in the sexual
21 assault case should be vacated under the Ninth Circuit's decision. The Court denied the principal relief
22 sought. However, the Court altered the prior judgment in the following fashion and for the following
23 reason:

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25 The Court will, however, modify the judgment to allow
26 respondents an opportunity to obtain review of the decision herein
27 through to an initial panel decision on the issue in the Court of Appeals.
28 The Court will reset the time for the State to file an election as to
whether to retry petitioner to 60 days from, *inter alia*, such an initial
panel decision. Thereafter, however, respondents must seek any further
stay of relief, including of the election deadline, from a reviewing court
pending any requests for panel rehearing, *en banc* rehearing, and/or

#77, at 7 (footnote regarding alternative appellate court remedies omitted).

On September 19, 2014, petitioner filed a motion for release (#90). Respondents opposed (#91), and petitioner replied (#92). Petitioner argues that the July 9, 2014 Ninth Circuit order denying the motion to enforce/clarify the mandate constitutes the initial panel decision that “addressed the issue . . . or has definitively declined to consider the issue,” and thus triggered the sixty-day time period for the State to file an election as to whether it will retry petitioner. *Id.* at 3. The court disagrees. The parties’ cross-appeals on the proper scope of the remedy were heard by a Ninth Circuit panel on October 6, 2014. The panel issued its Memorandum affirming this court on October 16, 2014 (#93). As this court’s previous order made clear, *that* panel decision triggers the sixty-day period.

DATED: October 20, 2014.

ROGER L. HUNT
United States District Judge